

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	DA 17-68
SKYBRIDGE SPECTRUM FOUNDATION	File Nos. 0005315615, 0005317957, 0006385354, 0006393317, and 0006409994
TELESAURUS HOLDINGS GB, LLC	File Nos. 0005315868, 0005318211, 0006385610, 0006393303, and 0006409988
Applications for Waiver and Limited Extension of Time	WT Docket No. 12-229

CONDITIONALLY SUBMITTED
APPLICATION FOR REVIEW, AND
IN THE ALTERNATIVE REQUEST UNDER SECTION 1.41

To: Office of the Secretary
Attn: the Commission

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February 17, 2017

Conditionally Submitted
Application for Review
and in the Alternative Request under Section 1.41

Petitioners Warren Havens (“Havens”) individually and Polaris PNT PBC (a claims assignee of Havens), conditionally submit, this application for review and in the alternative request under Section 1.41 for informal action (the “Application”) of the above captioned DA 17-68 (the “Order”). Their Standing and Interest to submit this Application are given in Section III below.

- I -

The Application is submitted conditionally due to the lack of current clarity from the California Superior Court that controls the receivership *pendente lite* under Receiver Susan Uecker that includes Telesaurus Holdings GB LLC, Skybridge Spectrum Foundation and other FCC licensee companies in which Havens has interests, and due to ongoing efforts of Havens to obtain clarity as to what the existing court orders impose and do not impose as to any prior restraint upon Havens in addressing in filings and communications various matters before the FCC, including matters relating to the Order, including for purposes of the currently submitted conditional Application.¹ I have explained this situation to Mr. Scot Stone of the Wireless Bureau earlier this week (in reference to a FCC matter other than the subject Order).²

¹ E.g., Ex. A and Ex. B. Regarding Ex. A: In the docket, the court denied this Havens request for confirmation of his interpretation of the listed past Orders, as it did orally at an earlier hearing this month. See the last document in Ex. A that is a copy of the Court’s order. Havens’s interpretation in Ex. A also refers to applicable Constitutional and federal law: That law is discussed in the writ, Ex. B, resulting in a Stay, also in Ex. B.

² The California Court of Appeal, in the Havens Case A4150411, recently issued a stay under a writ, both in Ex. B, as to several decisions of the Superior Court that imposed such restraints, one of which involved Havens petitioning the FCC in another matter, but with essentially the same issues posed by Havens submitting this Application and any supplement or substitute filing. A stay is issued where there is a probability to prevail on the merits.

Upon obtaining from the noted Superior Court, or any other court, or the FCC see request declaratory ruling on the noted restraint matters that may be imposed or not imposed under FCC jurisdiction and law, Ex. C)³ a favorable clear decision on the above- noted restraint matters, then Petitions will supplement or replace this filing.

The noted potential restraints and lack of clarity impose, *at minimum*, a substantial chill upon Havens's First Amendment rights to petition and engage in speech before the FCC that Havens believes violates these rights and should be found void.

If a non-FCC authority decides that Petitioners may not address the FCC on matters of the Order, then the FCC may determine if it and the parties involved are properly subject of that decision.

Petitioners assert that the above situation presents good cause for tolling as to deadlines of pleadings and other actions in seeking review of matters of the Order. Further good cause is shown in the Request to Accept included in Petitioners' Petitions for Reconsideration submitted January 18, 2017 of FCC 16-172 (including the clearly incorrect and *ultra vires* interlocutory FCC 15M-14 Order of ALJ Richard Sippel and delays by the Commission in addressing the Havens interlocutory appeals and other challenges of that Order as a cause of the receivership and restraint issues).

- II -

The following is submitted subject to the above:

Warren Havens and Polaris PNT PBC ("Havens", "Polaris", and together, "Petitioners")⁴ hereby submit this application for review and in the alternative request under

³ Exhibit C is not completed yet, however, upon completion in the near future it will be submitted as a supplement to this Application.

⁴ Havens is filing this Petition on his behalf. This filing is also submitted by Havens for Polaris PNT PBC, a Delaware Public Benefit Corporation, controlled by Havens. Havens has assigned certain rights and assets to Polaris to enable it to pursue wireless in the public benefit and for commercial gain.

Section 1.41 (the “Application”), on a conditional basis, of the Bureau’s Order, DA 17-68, that denied petitions for reconsideration of a prior decision, DA 14-1257, that denied certain requested regarding the subject licenses: all of Skybridge’s LMS licenses and one of Telesaurus Holdings GB LLC’s LMS licenses for Sacramento, CA EA (together, the “Licenses”). The condition is explained above in Section I.

If the FCC does not process this Application under §1.115, then Petitioners request processing under §1.41, including for a more full and complete record and determination in the public interest, especially since these matters involve or relate to equitable and reasonable treatment for licensees in radio services under FCC rules and law.

**The Bureau Erred in Not Providing at Minimum
a 5-year Construction/Substantial Service Time Period**

In the petition for reconsideration submitted by Warren Havens on September 29, 2014, regarding the Licenses (what the Order refers to as the “Havens Petition”, herein the “2014 Recon”) included as a major argument that Havens asserted is that the Commission’s *M-LMS Termination Order* (as it is referred to in the Order, herein the same term is used or “Termination Order”) issued on June 10, 2014, decided exactly as advocated by Skybridge and Telesaurus, that none of the LMS rules would be changed. The 2014 Recon submitted, among its requests and alternative requests, the obvious argument and request for an effective 5-year time period from the date of the M-LMS Termination Order. See, for example, the 2014 Recon at its section “2a. Unfair...”, pages 5-11. In the Order, there was no reasoned discussion of this argument and why it is not appropriate. Therefore, Havens asserts that the Order was improper and incorrect, because it did not even discuss this compelling argument or show that it was not a sufficient argument that met the waiver standard under Section 1.925.

The Commission provides 10-year construction/substantial service with no interim milestone to a large number of radio services that are generally newer services, or that involve newer equipment or technology that is yet to be commercialized.

It is abundantly clear that LMS multilateration service is a new radio service involving new technologies and applications. The reasons include:

(1) this radio service cannot be deemed to have been defined and commenced until the M-LMS Termination Order that took 10 years to complete (including RM-10403, followed by NPRM 06-49). That 2014 date is when this LMS multilateration service commenced because without the rules being finalized for the radio service, there is no meaning to the radio service. Also, until that date, there was no technology that could be reasonably invested in and completed for this radio service for the simple reason that the rules on permitted technical and use aspects were not completed, and the rulemaking considered drastic changes in the rules.

(2) The rules, which were left unchanged by the M-LMS Termination Order, were clearly designed and structured for wide-area ITS (Intelligent Transportation Systems) radio services (both radiolocation and tightly integrated data communications, with emergency voice communication permitted). Therefore, this LMS radio service is as new as any FCC radio service and clearly warrants a 10-year construction/substantial service period, but at the bare minimum 5 years. The Order decided that only 2 years was permitted, and that is unreasonable, inequitable, and arbitrary and capricious, given the Commission's determinations for other radio services that all have from 5 to 10 years for construction/substantial service. The Order is also anticompetitive and creates an unequal playing field for LMS versus competing radio services. The FCC has found that other radio services compete with LMS, including AMTS.

It is unreasonable for the FCC to think that any licensee could meet a 2-year buildout for any auctioned licenses, especially when the licenses are held nearly nationwide, and when that is not the normal period provided for construction/substantial service of auctioned licenses.

Skybridge as nonprofit deserves special relief

The Bureau erred in not giving considerable weight in deciding on the Havens 2014 Petition for Reconsideration to the nonprofit IRC §501(c)(3) tax exempt status of Skybridge. The Commission should consider that in this Application. Weight should be given for two reasons. (1) Skybridge used its nonprofit status and funds to successfully advocate for protection and maintenance of the Commission's LMS rules, including in this regard, supporting the University of California's research into high accuracy location, to be performed by the Licenses nationwide. See **Exhibit D** hereto.⁵ This is a public interest benefit under the Communications Act and should be considered. (2) For the same reasons that the Commission grants certain fee relief to nonprofits as explained in FCC 95-257, 10 FCC Rcd 12759 (1995):

We also consider several issues arising from petitions for waiver, reduction or exemption of the regulatory fees assessed.... We also broaden the scope of the exemptions for **nonprofit** entities.

[. . . .]

7. Nonprofit Entities. Section 9(h) exempts **nonprofit** entities from the regulatory fee requirement. 47 U.S.C. § 159(h). In the FY 1994 Report and Order, we held that the nonprofit exemption will be available only to those regulatees who establish their nonprofit status under **section 501** of the Internal Revenue Code. 26 U.S.C. § 501. 9 FCC Rcd at 5340 P17.

Re: LTE and Other New Technologies Mentioned in the 2014 Recon and the Due Diligence and Other Showings Filed with the FCC

This was demonstrated but improperly not considered in the Order. This included the major research by Dr. Nishith Tripathi for Havens (and Skybrige and Telesaurus), published in various FCC dockets, a copy of which is here:

<https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=270750084&attachmentKey=18951929&attachmentInd=applAttach>

⁵ The acknowledgement at the end references Atlis Wireless LLC. Skybridge and Havens contributed to this UC Berkeley research directly and via Atlis, which served as a not for profit service provider to all of the Havens-controlled entities pre-receivership.

Standing and Interest and Related Matters.

As explained herein, Petitioners include Havens and Polaris (by an assignment) and the interests they hold in the matters at issue in this Petition. In this Petition's legal proceeding, Petitioners have standing under Article III of the U.S. Constitution ("Standing")⁶ as well as party interest ("Interest") for the following reasons reflected in public FCC, Court, corporate, and other records.

(i) Initially Petitioners reference the petition for reconsideration submitted by Havens (at the time of the bankruptcy case of Skybridge Spectrum Foundation) of the FCC grant of the transfer of control application submitted near the end of year 2015 by Receiver Susan Uecker (see next footnote). That petition is still pending. The Receiver did not oppose the Petitioner.⁷ Petitioners believe and assert that said petition for reconsideration demonstrated that the transfer of control was unlawful and must be found invalid and void under FCC rules and 47 USC §310(d) of the Communications Act, including, inter alia, since (i) the control was taken by the Receiver prior to applying for the transfer of control (and no good cause for that

⁶ Article III of the Constitution limits the authority of the federal courts: they decide "Cases" and "Controversies." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992). For a dispute to be within the power (the subject-matter jurisdiction) of a federal court (and before the FCC as the FCC has decided - see below) the plaintiff or petitioner must have standing—that is, must have alleged a sufficient interest in the dispute. This "irreducible constitutional minimum" of standing has three elements: (1) the plaintiff has suffered a concrete injury; (2) that injury is fairly traceable to actions of the defendant; and (3) it must be likely—not merely speculative—that the injury will be redressed by a favorable decision. *Id.* at 560–61.

⁷ It was opposed by Arnold Leong, who obtained and maintains the Receivership. However, in his court pleadings to seek and that resulted in the Receivership, Leong (with FCC expert counsel, Steve Coran) stated that if the receivership is entered then the Receiver must comply with 47 USC §310(d), first getting FCC approval of transfer of control, that resided with Havens, and then taking that control—and that much is valid. However, after court stated that it would grant the Leong request for a receiver, Leong then submitted a receivership order (which the court signed off on) that stated the opposite- that the receiver will first take actual control, and then get the FCC to approve that—and that is invalid. But that is what the Leong Receiver did, but never seeking a transfer of control from Havens.

violation was shown and nor waiver sought and obtained), and (ii) the pre-Receivership control resided with Havens. In addition, Havens via counsel asserts in the California Court of Appeal that the Receivership is void and if void, Havens has never lost control in the Receivership Entities.⁸ Petitioners believe these matters, alone, provides Standing and Interest.

1. Polaris has Standing and Interest, first, by means of an assignment by Havens of some of Havens claims in the matters of this Petition, under the holdings of the US Supreme Court in *APCC Servs., Inc. v. AT&T Corp.*, 254 F. Supp. 2d 135, 137 (D.D.C. 2003).

2. Petitioner Havens has individual Standing and Interest because of reasons the full Commission and Wireless Bureau has determined and stated in formal AMTS orders and licensing decisions, from approximately the year 2000 to this day⁹. There are components to this but when the Commission and Bureau have determined this, and it was not challenged and

⁸ The Receivership of Ms. Uecker is known to the FCC and MCLM as discussed herein. Petitioners assert that the Receivership and the Receivership Order that commenced the Receivership are void due to lack of jurisdiction (where, for the gravamen of the complaint that resulted in the Receivership, and the gravamen of the Receivership Order and conduct of the Receivership, FCC jurisdiction and law is exclusive, and the State has no role or power, and also due to clear violations of Constitutional protections under the First, Fifth, and Fourteenth Amendments, and the Constitution's Contract Clause. If found void, then there was never any change in the pre- Receivership control of Havens in the Receivership Entities. These challenges asserting the void nature of the Receivership, Receivership Order and Receiver actions, are stated in formal court filings by Havens via counsel including before the California Court of Appeal, First District. The most recent filing is a Writ submitted by recently added counsel to Havens at the Foley Lardner law firm (San Francisco, Chicago and Washington DC offices). This Writ, and an associated Court grant of a requested Stay, are included here as Exhibit B. The Writ summarizes many key aspects of the Receivership and why it is improper, and has created extreme interference with Havens rights to petition the FCC. Havens asserts all rights including to relief based on this prejudice, especially where the FCC has improperly accommodated the Receivership that the FCC should know to be improper, and in violation of core FCC law and basis rights under the Constitution.

⁹ Including the OSC-HDO FCC 11-64 that commenced docket 11-71, that lead to docket 13-85 regarding the MCLM-Choctaw "Second Thursday" and other special relief requests, and in FCC 16-172 granting alleged "Second Thursday" "doctrine" relief (of which Petitioners submitted two petitions for reconsideration that are pending, one referencing intent to submit the instant Petition.

became final. It need not be demonstrated again here. Because AMTS is competitive with LMS,¹⁰ this gives Havens Standing and Interest in this Application also.

3. The claims of the pre-receivership “Petitioners” in underlying proceedings involving the subject Order and the Licenses which are currently subject of a temporary receivership *pendente lite* were abandoned by the Receiver with acceptance by the Receivership court, a California Superior Court (as shown in formal receivership court records and orders),¹¹ and reverted to pre-Receivership status, and that places them with the Havens, the defendant in the Receivership court action¹² (and thus also with Polaris for reasons noted above) for Standing and Interest purposes of this Petition. The relevant law regarding abandonment of assets, including legal claims, by California state court receivership is discussed in *Helvey v. United States Bldg. & Loan Asso.* 81 Cal. App. 2d 647; 184 P.2d 919; 1947 Cal. App. LEXIS 1109 (1947) (emphasis added):

Upon abandonment of assets by a trustee ... the title reverts to and remains in the bankrupt. He is entitled to reassert ownership of such assets. (*In re Ferribee*, C.C.A. 7) 93 F.2d 262, 264; *In re Moss*, supra; *Givens v. Louisville Property Co.'s Assignee*, 258 Ky. 740 [81 S.W.2d 401, 402]; *Cripple Creek State Bank v. Russell*, 74 Colo. 111 [219

¹⁰ For example, see DA 03-2065 (footnotes in original deleted):

6. Discussion. As an initial matter, we agree with Havens that he has standing to file the subject petition. Havens’s Location and Monitoring Service (LMS) geographic area licenses cover most of the area along the Mississippi River. We believe that in certain instances, the need to locate and monitor mobile radio units could be equally met by AMTS or LMS. Contrary to what Mobex contends, standing is not conditioned on Havens demonstrating that his LMS geographic area licenses, as a whole, cover the entire portion of Mobex’s integrated AMTS system. In view of the fact that there is significant service area overlap in this instance, and because it is conceivable that AMTS can compete with LMS for customers who need to locate and monitor mobile radio units, we conclude that Havens has standing in the instant matter.

¹¹ The Receivership court actions and records are known to the Wireless Bureau and MCLM. The Bureau is informed of this receivership court action as shown in various public FCC records, as well as records I have obtained under FOIA requests.

¹² The sole plaintiff, “Dr.” Arnold Leong, joined the Receiver in support of the abandonment, and thus, Petitioners assert that he has no remaining position in the matters of this Petition. As the plaintiff, he is the sole cause for the receivership and its maintenance, and Petitioners assert is liable for unlawful acts of the Receiver and damages caused.

P. 212, 213]; *In re Wattley*, (C.C.A. 2) 62 F.2d 828, 829; *In re Webb*, *supra*; *Leach v. Bank of Vollmer*, 47 Idaho 263 [274 P. 627, 628]; *Metz v. Emery*, 110 Kan. 405 [204 P. 734, 735]; *Abo Land Co. v. Tenorio*, 26 N.M. 258 [191 P. 141, 142]; *Kobrin v. Drazin*, 97 N.J.Eq. 400 [128 A. 796].) [...] No cases have been furnished to us in which a receiver was appointed, but the result would be the same as in the cases involving a trustee in bankruptcy. [...] When the ... court authorized its receiver to abandon the judgments described in the pleadings, and he did abandon them, title reverted to defendant.... In such cases the abandonment is accomplished by the affirmative acts or by ... failure to make use. Such abandonment leaves the property as though he had never owned or occupied it....

Thus, the claims to challenge the Order reside with Havens (and by the assignment, with Polaris also).

4. Also, during the Receivership, Havens and not the Receiver is in charge of the Receivership Entities for purposes of their defenses of and counterclaims to the claims of “Dr.” Arnold Leong,¹³ the sole plaintiff that obtained and sustains the Receivership, and those claims, defenses and counterclaims include all of the matters presented in this Petition. This also demonstrates Standing and Interest. In brief, as shown in the Receivership Court records:¹⁴ The Receivership Court ordered in early 2016, changing its initial Receivership Order issued in November 2015, that only Havens, and not the Receiver to any degree, will be in control of all of the Receivership Entities for purposes of the *Leong v. Havens & Entities, v Leong* arbitration

¹³ Petitioners’ position stated in the Receivership Court Action, and to a degree already in FCC filings after the Receivership commenced, is that these Leong claims, carried out by his legal counsel, as clearly shown in persuasive written evidence and by Leong admissions under oath, are false and fraudulent, repudiated, rife with perjury, illegal in content and intent under relevant FCC law, malicious and abuse or process, employ illegal threats and concealment and destruction of evidence under 18 USC §1519, and as carried out are deliberate attacks of protected rights of Havens and the Entities under the Constitution’s Contract Clause, and First, Fifth and Fourteenth Amendments, and are thus void. Leong’s and his receivership have relations with MCLM also already shown to a degree in Receivership records, among other records.

¹⁴ Havens assumes that the Receiver via her legal counsel (Brian Weimer and others at Sheppard Mullin) informed the FCC Wireless Bureau and other parts of the FCC dealing with the Receivership Entities, of these matters including by a require rule 1.65 report. Otherwise, the FCC may be under the misunderstanding as to this Havens role, resulting in prejudice to Havens, and ex parte and other rule violations.

to determine the just noted claims, defenses and counterclaims. (The Receivership Court made no determinations of fact or law since the dispute had been ordered to arbitration by another judge at the same Court years before.) As show in public Receivership Court records, the arbitration is under an arbitration agreement within several LLC agreements in which FCC law is described and is controlling as to FCC licensing and other matters of the LLCs. And in any case, matters of FCC licensing and proceedings are under exclusive FCC jurisdiction, and the gravamen of the Leong claims, and the Havens & Entities defenses and counterclaims, rest solely upon FCC rules, precedents, and policies and the Federal Communications Act and 1996 Telecom Reform Act, and include all matters of this Petition.

5. Standing and Interest is also based upon the following. As the FCC stated:

In adjudicatory licensing proceedings, for example, the Commission has applied the same test that courts employ in determining whether a person has standing under Article III to appeal a court order: the person must show (1) a personal injury “in fact”; (2) that the injury is fairly traceable to the challenged action; and (3) that it is likely, not merely speculative, that the requested relief will redress the injury. FN15/

FN15/ See *In the Matter of Daniel R. Goodman, Receiver; Dr. Robert Chan, Order on Reconsideration*, 14 FCC Rcd 20547, 20549 at ¶ 4 (1999); *Edison Reconsideration Order*, 8 FCC Rcd at 2737, ¶ 7; *Hudgins Reconsideration Order*, 16 FCC Rcd at 7944, ¶ 8; *Compton Reconsideration Order*, 15 FCC Rcd at 16566, ¶ 8. Cf., *In re the Application of MCI Communications Corp. and Southern Pacific Telecommunications Company*, (continued....)

In the Matters of AT&T v Business Telecom, Sprint v Business Telecom, FCC 01-282 (2001). In this regard, independent of the above and the existence of the Receivership (and even assuming the Receiver has obtained lawful transfer of control from Havens from the FCC: see below), the Receivership does not change the ownership interest and levels of Havens in the Receivership Entities including Skybridge and Telesaurus. That ownership establishes Article III Standing under the relevant case law (including the subset of cases involving FCC licensing in part cited above). Those Entities actions and claims in FCC licensing include the subject MCLM licensing at issue in this Petition including because the MCLM licenses are subject to

claims by the lawful high bidders in Auction 61, two LLCs among the Entities, and result in other claims as well. See, e.g., the Petitioners' Petitions for Reconsideration of FCC 16-172 subjected last month (January 2017).

6. In addition, where a plaintiff (Petitioners in this case) was or is the object of the actionable conduct of a defendant (Arnold Leong in this case), Standing is easy to establish—it is essentially a non-issue. It is a straightforward case in which a plaintiff suffered a redressable injury at the hands of the defendant. *Amburgey v. United States*, 733 F.3d 633, 636 (6th Cir. 2013). Here, Mr. Leong has throughout his history with Havens and to this day accused (falsely but clearly) Havens of mismanagement as to the subject Licenses in FCC licensing proceedings: this is part of his court and arbitration claims, never yet adjudicated.¹⁵ /¹⁶ A person so accused where loss of rights and interests are sought by the accusation has clear Standing and Interest to respond including by challenges as in this Petition.

7. Petitioners also have Standing and Interest in the matters of this Petition under their rights to seek the spectrum in the subject Licenses in future FCC auctions or other licensing actions. See e.g., *Northeastern v Jacksonville*, 508 U.S. at 666.

8. Other support for Petitioners' Standing and Interest may be provided if needed, in the course of this proceeding.

9. In addition, the FCC policy in *Linda Crook*, FCC 88R-19 (1988) applies here: “the transcendent purpose of FCC administrative proceedings is to do justice to the parties and

¹⁵ Nor can they be determined outside of FCC proceedings, since FCC has exclusive jurisdiction. Leong has chosen to not assert any of his core claims that pertain to FCC licensing matters before the FCC, in the twenty years he has been asserting, giving up, then reasserting them outside of the FCC. Leong has not interests of any type, and never did, in Skybridge but claims to have such interests.

¹⁶ Havens has formal claims pending against Leong in arbitration and otherwise.

to the larger public interest,” citing to: “*Son Broadcasting, Inc.*, 92 FCC 2d 450, 452 (Rev. Bd. 1982) and 47 CFR § 1.106(c)(2) (public interest justifies reconsideration of decisional facts).”

Conclusion

For reasons given above, the Application should be granted.

Respectfully submitted,

/s/

Warren Havens, for

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February 17, 2017

^[*] Individually, not for any other party.

Declaration

I, Warren Havens, declare under penalty of perjury that the foregoing filing, including all attachments and exhibits, was prepared pursuant to my direction and control and that the factual statements and representations contained herein are true and correct.

/s/ Warren Havens
[Submitted Electronically.]

Warren Havens

February 17, 2017

Certificate of Service

I, Warren C. Havens, certify that I have, on February 17, 2017, caused to be served, by placing into the USPS mail system with first-class postage affixed unless otherwise noted below, a copy of the foregoing filing, including any exhibits or attachments, to the following:¹⁷

Sheppard Mullin Richter and Hampton LLP
Brian D Weimer
2099 Pennsylvania Ave NW Suite 100
Washington, DC 20006
ATTN Brian D. Weimer

/s/ [Filed Electronically.]

Warren Havens

¹⁷ The mailed copy being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.